362.

SUPREME COURT OF THE UNITED STATES.

No. 95.

SAMUEL SPRIGG, APPELLANT.

VERSUS

THE BANK OF MOUNT PLEASANT.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

INDEX.

	Original.	*Print.*
Complainant's Bill - - - - -	1	3
Injunction Allowed - - - - -	6	8
Defendant's Answer - - - - -	7	8
Replication of Complainant - - - -	9	11
Deposition of Morgan Nelson - - - -	10	11
" " Lewis Walker - - - -	12	13
Exhibits referred to in Walker's Deposition - -	14	14
Deposition of Lewis Walker - - - -	21	26
Decree—Appeal Prayed—Appeal Bond - - -	24	28
Clerk's Certificate - - - - -	25	29

Langtree & O'Sullivan, Print.

Pleas begun and held at the court-house, in the city of Columbus, on the third Monday in December, being the seventeenth day of the same month, in the year of our Lord one thousand eight hundred and thirty-eight, and of the American independence the sixty-third, before the honorable John McLean and Humphrey H. Leavitt, judges of the circuit court of the United States within and for the seventh circuit and district of Ohio:

Among other proceedings had, were the following, to wit:

SAMUEL SPRIGG
vs.
THE PRESIDENT, DIRECTORS AND COMPANY of the BANK OF MOUNT PLEASANT. } In Chancery.

Be it remembered, that at the December term of said court, Anno Domini one thousand eight hundred and thirty-six, to wit, on the 19th day of December, came into court the complainant Samuel Sprigg, by Z. Jacob, Esqr., his solicitor, and filed herein his bill in chancery, which is in the words following, to wit:

"To the honorable the judges of the seventh circuit court of the United States for the 7th circuit and district of Ohio, humbly complaining, showeth unto your honors, your orator, Samuel Sprigg, a citizen and inhabitant of Ohio county, in the State of Virginia:

That in February, Anno Domini, 1826, Peter Yarnell and Samuel Mitchell, of said county, were doing business together as partners in Wheeling under the name and style of Peter Yarnell & Co., and that about the 20th of February, 1826, and before and since, the President, Directors and Company of the bank of Mt. Pleasant, (and whom your orator prays to make defendants hereto, with apt words to charge said bank, &c.,) were a banking company, incorporated by the Legislature of Ohio, and then and still doing business as a bank, at the town of Mount Pleasant, in Jefferson county, in the State of Ohio, that about the said 20th day of February, 1826, the said Peter Yarnell & Co., borrowed from the said bank twenty-one hundred dollars, and thereupon gave the said bank, for the purpose of securing the payment thereof, their single bill, with your orator, Richard Simms, Alexander Mitchell and Z. Jacob, (all of Ohio county aforesaid) as their securities. This single bill or note, or obligation bears date on said 20th of February, 1826, and was executed by said Peter Yarnell & Co. Your orator, Richard Simms, Alexander Mitchell and Z.

Jacob, and payable in sixty days to said bank, but for more certainty herein, your orator files herewith a copy of said single bill, and prays to make the same, and which is marked No. 1, a part of this bill.

This obligation or single bill was in truth and in fact executed by your orator, said Simms, Alexander Mitchell and Z. Jacob, at the request of said Peter Yarnell & Co., and as their securities, and for their accommodation.

And your orator further says, that the said twenty-one hundred dollars, mentioned in said obligation, a copy of which is herewith filed as aforesaid, was a loan made by said bank at their banking-house, in said town of Mount Pleasant, in the usual way of making loans at said bank, to and for the sole benefit and accommodation of said Peter Yarnell & Co., the first obligors in said obligation named, and that said obligation or single bill was given to said bank for the sole purpose of securing to said bank the payment of said loan of $2100 00 in sixty days from the date thereof, which loan was so made to said Peter Yarnell & Co., as aforesaid, and that your orator and said Simms, Alx. Mitchell and Jacob, were in truth and in fact merely securities for the said Peter Yarnell & Co., for the payment of said $2100 00, so loaned said Peter Yarnell & Co., by said bank, and they were so received, accepted and treated throughout by said bank in all transactions of said bank relating to said loan. When the said bank as your orator charges made the said loan, and received or discounted said obligation, the bank and its officers well knew that the said loan was for the said Peter Yarnell & Co., and not for your orator, or said Simms, Alx. Mitchell or Z. Jacob, and that said Peter Yarnell & Co. were in fact the borrowers of said $2100 00 and in truth the real debtors to said bank, and the real principals in said single bill, and that your orator and said Simms, Alx. Mitchell and Z. Jacob, were in truth only securities therein for said Peter Yarnell & Co.

And your orator repeats and charges the truth to be, that notwithstanding the form of said single bill, and any thing therein contained, that he, your orator, and said Simms, Jacob & Alx. Mitchell, were and are only securities in said single bill, and not principals, and that the said bank and its officers knew the fact to be so, when they loaned the said money, and when said obligation was delivered to and accepted by said bank to secure the payment of said loan, and that said bank made the said Peter Yarnell & Co., and knew when they took said single bill that said Peter Yarnell & Co. were the principal obligors therein.

Your orator further charges and shows unto your honors, that at the time the said single bill became due, to wit, about the 21st day of April, in the year of our Lord, 1826, the said bank, as your orator is informed and believes, and charges to be true, in consideration of twenty-two dollars and 40 cts. paid by said Peter Yarnell & Co. for the discount or interest in advance of the said $2100 00 for sixty days then next following, undertook and agreed with said Yarnell & Co., without the knowlege or consent of your orator, said

Simms, Jacob, Alx. Mitchell, or either of them, to give and then and there did give to said Yarnell & Co. the further credit and further time of payment of the said loan and obligation, for sixty days from and after said 21st day of April in said year 1826. And your orator further says that he is informed and believes and charges to be true, that afterwards, to wit, at the expiration of said last named sixty days, further credit and time of payment as aforesaid, and at the expiration of each and every sixty days successively thereafter, until after the failure of said Peter Yarnell & Co., which took place in the September or October of the year 1828; the said bank did receive at their bank in said town of Mount Pleasant, of and from said Yarnell & Co. the sum of twenty-two dollars and forty cents, for the discount or interest in advance of the said loan of $2100 00, and at each consecutive day of discount and payment of interest in advance as aforesaid, until after the said failure and insolvency of said Peter Yarnell & Co., the said bank did, without the knowledge or consent of your orator, said Simms, Jacob and Alx. Mitchell, or either of them, and in consideration of said sum of 22 dollars and 40 cents, so paid to them by said Yarnell & Co., on each of the said days of discount and payment of interest in advance as aforesaid, agree with said Yarnell & Co. to give and did then and there did give to said Peter Yarnell & Co. the further credit and time of payment of said loan, of sixty days, from and after each consecutive day of discount and payment of interest in advance as aforesaid, until after said failure and insolvency aforesaid, of said Peter Yarnell & Co., and which happened as aforesaid some time in September or October of the year 1828, as your orator is informed and believes.

Your orator further says, that afterwards, to wit, about the month of September, 1828, the said Peter Yarnell & Co., and both of said partners failed and became insolvent; and wholly unable to pay their joint debts, and that your orator and his said co-securities or either of them, had not any notice, knowledge or information of the non-payment of the said loan so made by said bank to said Yarnell & Co., or of the outstanding of said obligation, from the time the same became due, about the 21st of April, 1826, until after the failure and insolvency of said Peter Yarnell & Co., and said partners Yarnell & Mitchell; and that during all the time that said bank was so indulging said Yarnell & Co., and giving them said new and further time of payment of said loan and obligation, on said new contract and agreement, your orator, and also his said co-securities, as your orator is informed and believes were wholly ignorant of the fact that said new and further time of payment on said new contract were given as is before alleged by said bank. And your orator also says that during all this time (to wit, between the said 21st of April, 1826, and said failure and insolvency of said Yarnell & Co.) he and his said co-securities as he believes were wholly ignorant of the fact, that said loan and obligation was not paid when due according to its terms, in point of fact as your orator charges to be true, he believes and supposes that said Yarnell & Co. had long before their

failure, and about the said time that said obligation was at maturity by its own terms, paid and satisfied the same. Had your orator known the fact before said Yarnell & Co's failure, that said obligation was unpaid, at its maturity, or that he was liable for the payment thereof, he could, as he verily believes and charges to be true, have secured himself from any loss, from his said securityship, but this he cannot now do, owing to the continued insolvency of *of* said Peter Yarnell & Co. He further says that said Peter Yarnell & Co. were solvent, and continued doing business from the time said obligation was given to said bank, to the said month of September or thereabouts, in the year 1828, and that during the time which elapsed between the day said obligation became due, and said failure and insolvency of said Yarnell & Co. said bank or your orator, and his said co-securities, could have collected and realized the money secured by said obligation from said Peter Yarnell & Co., and that if said bank had not renewed said loan, and given said new and further time for payment of said money, as is before charged, said obligation could have been collected from said Yarnell & Co. And your orator believes, and so charges the fact to be, that neither said bank or your orator and his said co-securities, would have sustained any loss by reason of said loan and obligation, had not said bank of its own accord, and without the knowledge or consent of your orator and his said co-securities, so extended and prolonged upon said new contract, the day and time of payment thereof as is before charged and set forth.

By reason of the facts before alleged, your orator charges that he is not liable for said loan or said obligation, and that he ought not to be charged with the said debt or liabilities, or by virtue of said writing obligatory. Nevertheless, the said bank, contriving and intending to impose upon your orator a loss which has occurred to said bank in consequence of confidence and bargains made by themselves (said bank) with said Yarnell & Co., and in fraud of your orator and his said co-securities, if at the time of bestowing such confidence and making such bargains, it was intended to hold your orator and his said co-securities liable, and more particularly in fraud of your orator and his co-securities if such confidence and contract for extending credit to the said Peter Yarnell, & Co., was at the time of making the same, a mere personal confidence and contract with said Yarnell & Co., for the purpose of charging your orator with the payment of the amount due upon said single bill or obligation, commenced a suit thereon against your orator, as a several debtor thereon, in the court of common pleas of Belmont County, in the State of Ohio, on or about the 9th day of January, in the year 1831, which suit your orator caused, in due form of law, to be removed for trial to this court, where it was docketed at the July term, for the year 1831. And your orator in defence to said suit, and in bar of the right of said bank thereon to recover, pleaded sundry pleas, setting up the matters aforesaid, as a bar at law, of the recovery by said bank, in said suit upon which pleas such issues were taken, as presented for the

consideration and decision of this court; the question, whether the matters aforesaid constituted a defence at law, and this court adjudged that at law the said matters were not available defence for your orator. Whereupon your orator prosecuted a writ of error from the judgement of the law side of this court to the Supreme Court of the United States, where the judgement of this court was affirmed, and it was thus judiciously decided by the highest judicial tribunal, to which the case could be submitted, that your orator is without remedy in the premises at the law side of this court. And in as much as your orator is advised and verily believes, that the transactions of the said defendants in making repeated contracts with said Yarnell & Co., for extending their credit on the said single bill or obligation, without consultation with or notice to your orator and his co-securities, when the said bank, notwithstanding the terms used in said single bill, well knew that your orator and his said co-securities were not principals or beneficial debtors therein, or actors in obtaining said loan, or said extended credit thereon, in equity and good faith, discharges your orator from all liabilities for the amount due on said single bill, and though precluded by the form of judicial proceedings from making his defence at law, your orator is advised that his remedy is in equity, where frauds, mistakes and undue advantages, &c., are properly cognizable. Your orator further sheweth, that said bank in prosecuting their iniquitous and fraudulent design, to charge your orator with a loss to them, the consequence of their own misplaced confidence, have sued out execution upon their said judgement in this court against your orator, and levied the same upon real estate, as the property of your orator, and are about to sell the same to make the money aforesaid. All which is against equity and justice. In tender consideration whereof, as your orator is without remedy in the premises, except in a court of equity, your orator, prays process, &c. And that said bank may answer this bill, and your orator, further prays that until the matters aforesaid can be heard in equity, that said bank and its confederates, the officers and marshal of this court, and all others be enjoined from all further proceedings upon said judgement and execution aforesaid. Your orator also prays that you will make a final decree, perpetually enjoining further proceedings on said judgement and execution, and discharging your orator from all liability therefor. He also prays for such other, further, and general relief in the premises, as to equity and justice shall seem right, and as in duty bound will ever pray &c.

SAM'L SPRIGG,
C. HAMMOND, } *Sol. for Compl'ts.*

STATE OF OHIO,
Franklin County, ss.

W. T. Martin, a justice of the peace, for said County of Franklin in the State of Ohio, do hereby certify, that Samuel Sprigg, the within named compl't, this day appeared before me, in said county, and

made oath that the facts stated in said bill depending on his own information are true, and that the residue of the facts therein alleged are true as he verily believes.

Witness my hand and seal, this 17th day of December, 1836.

W. T. MARTIN, *J. P.* [SEAL.]

And thereupon came the complainant, by C. Hammond, Esq., his counsel, and the defendants by P. B. Wilcox, Esq. their counsel, and on motion of complainant by his counsel, it is ordered that an injunction be allowed as prayed for in the bill, and that the plaintiff give bond and security in the sum of seven thousand dollars to the defendants, conditioned according to law.

Whereupon the complainants filed a bond to the acceptance of the court, and the defendants, by their attorney waives process. And this cause was continued, and afterwards, to wit; on the twenty-sixth day of April, Anno Domini, one thousand eight hundred and thirty-seven, came the defendants by their counsel, and filed their answers following, to wit:

" Circuit Court of the United States, for the 7th Circuit and District of Ohio.

SAMUEL SPRIGG, Complainant
vs.
THE PRESIDENT, DIRECTORS AND COMPANY of the BANK OF MOUNT PLEASANT, Defendants, } In Chancery

The answer of said defendants under their common seal, to the bill of complainant, of said complainant exhibited in said court, by said complainant against them. These defendants now and all times hereafter, reserving to themselves, all advantage of exceptions to the insufficiencies of said bill for answer thereto, or so much thereof, as they are advised it is material for them to make answer unto, answering say, that it is true, that said complainant with said Peter Yarnell & Co., Richard Simms, Alexander Mitchell and Z. Jacob, executed said bond and presented the same for discount to these defendants (who were a banking company, and still are such, incorporated as in said bill stated) at their banking house in said town of Mount Pleasant, at or about the time mentioned in said bill of complaint, and that the same was discounted at the instance of the complainant and the other obligors in said bond, and the proceeds thereof amounting to twenty-one hundred dollars, deducting therefrom the interest for sixty days, paid by these defendants, to the said Alexander Mitchell, and not the said Peter Yarnell & Co., who in the said bill is stated to have been the principal debtors. These defendants deny having any knowledge at the time said bond was discounted, or since, that any partnership existed between said Peter Yarnell and Samuel Mitchell, but believe that all of said obligors resided in Ohio county, Virginia, and they, (these defendants) most positively deny having any knowlege of any transaction in relation to said bond until it was

presented to them for discount as aforesaid, or that they had any knowledge on their part of the relation in which the obligors in said bond stood one to an other, and among themselves, or that they knew that the money or the proceeds of said bond so discounted as aforesaid, was obtained for the exclusive benefit of the said Peter Yarnell and Samuel Mitchell, nor that the said Peter Yarnell and Samuel Mitchell were the principal debtors, as between them and the other obligors in said bond; they also deny that they received, accepted and treated said Peter Yarnell & Co., as the principal debtors, in relation to said loan. These defendants aver that said complainant and all the obligors in said bond, were principal debtors, and so contracted with, and bound themselves to these defendants, let their relation to one another, and among themselves, be what it may, as will appear by a copy of said bond, filed with and made a part of said bill of complaint. And they further aver, that it was on the faith of this agreement alone, that they received and discounted said bond of said complainant and other obligors, and had not said complainant and the other obligors in said bond, contracted with and bound themselves to these defendants as princlpal debtors (let their relation to each other and among themselves, be what it might) they, (these defendants) would have not discounted said bond, and that this agreement was so made by the said complainant, and the other obligors in said bond, with a full knowledge and a fair understanding of the fact and also of the purport of the provisions of said bond. And these defendants further claim and aver, as they are advised and believe. that said complainant having bound himself in said bond as a principal debtor to these defendants is, as between him and these defendants, estopped by the laws of the land from saying, and cannot now say, that he is only a security.

These defendants in further answering, deny that they ever agreed to give, or that they ever gave to said Peter Yarnell & Co., the further credit and further time of payment of the said money or loan, at the time or times, or on the terms as in satd bill of complaint charged, without the knowledge or consent of said complainant, and the other obligors, or at any other time or times, or on any other terms. They also deny that they knew of the failure and insolvency of said Peter Yarnell, & Co., until about the time they caused suit to be brought against said complainant in the said court of common pleas, of the said county of Belmont, nor do they know any thing about the continued insolvency of the said Peter Yarnell & Co., nor whether the said complainant knew that said bond or loan was not paid when due or not, nor whether he, if he had known the fact, could have secured himself in relation to said loan or not.

They do not know whether or not, said loan or money could have been collected from said Peter Yarnell & Co. after the same became due, and before their failure and insolvency. These defendants deny that they intended to impose a loss upon said complainant by not requiring said loan or bond to be paid promptly when due, and admit that they used just lenity towards said obligors in that behalf, but

aver that they done so in consequence of the fact, that at the time they had great confidence in the honesty, integrity and solvency of said obligors, and considered them all principal debtors, and believing that as Peter Yarnell was the brother-in-law of said complainant, and Samuel Mitchell who was his partner, was the brother-in-law of Z. Jacobs, and Alexander Mitchell was the father-in-law of Z. Jacobs, and the father of Samuel Mitchell, they would act honestly one to another, and among themselves, and in good faith with their contract aforesaid, according to the terms and tenor thereof. These defendants admit that such procedings were had in the said court of common pleas in Belmont County, and on the law side of this court, and in the Supreme Court of the United States, and that execution has issued as in said bill charged and set forth.

These defendants deny all manner of unlawful confederacy, and submit to this court, that all the matters in the said bill complained of, are matters with regard to which the complainant is not entitled to any relief from a court of equity, and pray the same benefit of this defence as if they had demurred to said bill of complaint; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and pray to be hence dismissed with their costs and charges most wrongfully sustained in this behalf.

JOSEPH GILL, *Prest.*
ROBT. J. ALEXANDER,
Sol. for Defts.

[L. S.] The seal of the bank was affixed to the above answer, by order of the board of directors, Bank of Mount Pleasant, 4th mo. 24th.

ENOCH HARRIS, *Cashier.*

And afterwards, to wit, at rules held in the clerk's office, in the month of May, in the year last aforesaid, came the respondents, by their solicitor, and entered a rule against the said complainant, to file his replication by June rules, at which June rules came the respondent, as aforesaid, and the said complainant having failed to file his replication as he was ruled to do, a default was entered according to the rules of said court.

And afterwards, to wit, at the July term of said court, Anno Domini one thousand eight hundred and thirty-seven, this cause was continued.

And afterwards, to wit, at the December term of said court, in the year last aforesaid, came the parties, by their solicitors, and by consent, the default herein is set aside, and thereupon the complainant files his replication, which is as follows, to wit:

SAMUEL SPRIGG, pltf.,
between
The PRESIDENT, DIRECTORS, & Co., of the BANK OF MOUNT PLEASANT, defts. } In Chancery.

The Replication of Samuel Sprigg, Complainant, to the answer of said President, Directors & Co., Defendants.

This repliant saving and excepting to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereto, saith, that he will aver and prove his said bill to be true, certain and sufficient, in the law to be answered unto, and that the said answer of the said defendant, is uncertain, untrue and insufficient to be replied unto by this repliant; without that, that any matter or thing whatsoever, in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

JACOBS, *for Pltf.*

And by consent this cause is continued. And afterwards, to wit, at the July term of said court, Anno Domini one thousand eight hundred and thirty-eight, by consent, this cause is continued. And now at this day, to wit, at the time and place first herein aforesaid mentioned, to wit, on the 22d day of December, Anno Domini one thousand eight hundred and thirty-eight, came the parties, by their solicitors, and thereupon the following deposition and exhibits were read as evidence in the case on the part of complainant, to wit:

SAMUEL SPRIGG,
vs.
The PRESIDENT, DIRECTORS & Co., of the BANK OF MOUNT PLEASANT. } In Chancery in the Circuit Court of the United States for the Seventh Circuit and District of Ohio.

The Deposition of Morgan Nelson.

Morgan Nelson, a witness on behalf of complainant, having been first duly sworn, made oath and said, "I was acquainted with "P. Yarnell & Co.," from the year 1826, and before, until the time of their failure. I was acquainted with Peter Yarnell and Samuel Mitchell who were co-partners, using the style of "P. Yarnell & Co." for many years before that time, (1826,) but I am unable to state at what time they formed that co-partnership. The said firm, "P. Yarnell & Co.," failed in the summer or fall of 1828. My impression is, it was the summer of that year. From 1826 until their failure they were doing a large business. They had a store in Wheeling, Va.

I think they were also during that time engaged as army contractors. My impression is, that P. Yarnell had been an army contractor for some time before the formation of this partnership, and the firm afterwards became contractors. Money could have been collected from the said firm, from 1826 until the spring of 1828. I know that money was collected from them between those periods to a considerable amount. I, as attorney for C. Tiffany, surviving partner of Col. Tiffany, brought suit against Peter Yarnell in the summer of 1826, upon a note given by him in the fall of 1824, for $1,600 00, the consideration of which was pork, previously purchased in Missouri to fill an army contract. The claim was disputed, Yarnell contending that quality of the pork was not good, by reason whereof he ought not to pay the full amount of the note. I obtained a judgement for the amount of the note, and interest, at the April term of the supreme court of this county in 1827. An execution issued and a forthcoming bond was given, upon which bond I obtained a judgement, at the September 1827. One thousand dollars of the money was paid by Peter Yarnell in December of the same year, and the balance, upwards of $900 00, also paid by him on the 10th of April, 1828, according to my memo. of the case. I think it was a matter of public notoriety here at Wheeling, Va., that P. Yarnell and Samuel Mitchell composed the firm of "P. Yarnell & Co." It was also a matter of public notoriety here, that said firm were engaged as army contractors. Both Yarnell and Mitchell failed individually as well as a partnership aforesaid.

Cross-examined by R. J. Alexander, Atto. for Defts.

The partnership of P. Yarnell & Co., subsisted during the year 1826; but whether it was formed during that year or previously, I do not now recollect. I recollect subsequent to the failure of P. Yarnell & Co., that P. Yarnell made an assignment, but the precise time I do not rembember; and further he saith not.

MORGAN NELSON.

Sworn to, and subscribed in presence of

JAMES S. WHEAT, *Mast'r Com'r.*

STATE OF VIRGINIA, *Ohio County, viz:*

I, James S. Wheat, a master commissioner in chancery, for the taking of depositions in the circuit superior court of law and chancery for Ohio county, do hereby certify, that the foregoing deposition of Morgan Nelson was duly taken before me at the office of Jacobs and Wilson, in the city of Wheeling, and county and State aforesaid, on this 9th day of December, 1837, in the presence of Z. Jacobs, Esq., solicitor for complainant, and of R. J. Alexander, Esq., solicitor for respondents in the before mentioned case; that said Morgan Nelson, the witness, is of full age, and was first duly cautioned and sworn to

speak the truth, the whole truth, and nothing but the truth, and that said deposition was duly signed in my presence, and by me reduced to writing.

Given under my hand and seal, this 9th day of December, Anno Domini.

JAMES S. WHEAT, [L. S.]
Mast'r Com'r.

Agreed to be read on the hearing, reserving any just exception to the competence of the evidence or any part.

ROBT. J. ALEXANDER,
Sol. for Defts.
JACOB, *For Plaintiff.*

SAMUEL SPRIGG, *vs.* The PRESIDENT, DIRECTORS, & COMPANY of the BANK OF MOUNT PLEASANT.	Injunction Bill pending in Chancery in the Circuit Court of the United States, for the Seventh Circuit and District of Ohio.

The Deposition of Lewis Walker, taken before me the subscriber, a Justice of the Peace for Jefferson County, in the State of Ohio, at my house and office in the Town of Mount Pleasant, in said County, on the 16th day of November, 1837, in the presence of Z. Jacobs, Counsel for the Plaintiff, and Robert J. Alexander, Counsel for said Bank.

The said Lewis Walker, being duly cautioned and affirmed according to law, he being of the denomination of Friends, and scrupleous about taking an oath, doth depose and say: "I was cashier of the bank of Mount Pleasant during the year 1826, and continued to serve in that capacity, until the beginning of the year 1830. There was a bond discounted in said bank, on February 20th, 1826, for Peter Yarnell, in which said Yarnell, Samuel Sprigg, Richard Simms, Z. Jacobs and Alexander Mitchell, were jointly bound, for the sum of twenty-one hundred dollars. The proceeds of said bond was carried to credit of Peter Yarnell, it being the practice in the bank to carry to the credit of the first signer of a bond, the nett proceeds of said bond, and to pay out to the order or check of said first signer. But in this case, as said Yarnell was not present, to save trouble to the parties, and having confidence in Alexander Mitchell, it was paid to his check, and charged to Yarnell's account. The above mentioned bond was discounted for sixty days, and interest for 64 days taken or retained. At the end of the term, (nine weeks,) it was again discounted for 64 days, and the interest paid for that time, (or nearly that amount,) the interest for 64 days from Rowlett's Tablets, being twenty-two $\frac{49}{100}$ dollars. The bond was continued to be discounted, at the expiration of each term of nine

weeks, till November 24th, 1828, when it was laid by and not discounted afterwards during my stay in the bank.

The practice of the directors when I was cashier, was to have a list of the bonds and notes due laid before them, which was read over, and if any was thought to be *unsafe*, or that the time had run out, when, by agreement, they were to be paid, they would order them to be laid over, and not discounted, and any others the cashier would discount without any further orders from the directors, it being the practice for the cashier to discount all bonds due on any day, unless otherwise ordered by the directors; which practice was followed during my service in bank. Notes and bonds were discounted for 64 days, viz: sixty—the day on which the discount is made, and three days grace; and if the same bond is discounted a second, third, or more times, the same course is pursued, and the same discount taken each time. These six terms, of nine weeks each, will make fifty-four weeks, or three hundred and seventy-eight days, during which time, by paying twenty-two $\frac{40}{100}$ dollars each term, he would pay one hundred thirty-four $\frac{80}{100}$ dollars, having paid six days interest for the day on which each discount was made, over and above what he would have paid, had it been discounted for the whole term of 387 days at once. This course was pursued in the case of this bond of P. Yarnell's. I do not recollect of ever hearing of Richard Simms, whether he wished the accommodation continued or not; neither do I know that he was informed that the bond was unpaid.

When the above bond was discounted, I believe it was expected to be for the use of the first signer of the bond, it was understood that P. Yarnell & Co. were army contractors at that time, and they had in the course of the two succeeding years several other bonds discounted, as the bank's book shews. Each time the bond was discounted, it was considered that the credit was extended *that the credit was extended* to the last of said, or the time of payment deferred till that time had expired.

Cross-examined.

Question. Do not defendants consider and treat those who sign bonds of the description of one in this case, as principal debtors, let their relation amongst themselves be what it may? *to which question the plaintiff objects.*

Answer. They consider them all as principal debtors.

Question. Do you know whether Peter Yarnell was the principal debtor?

Answer. Does not know certainly.

Question. Do you recollect that you paid the proceeds of said bond to Alexander Mitchell?

I think the money was paid to Alexander Mitchell, in corroboration of which said Mitchell's check, for said amount and same date, is in bank.

Question. Is it from the circumstance of said check being in bank alone, you think so?

Answer. It is not from that alone, but from a recollection of a circumstance which occurred at the time. Peter Yarnell not being present at the time, and I having full confidence in Alexander Mitchell, paid the amount on said Mitchell's check, and to save trouble to the obligors on the bond.

Question. Do you know that the defendants knew that the proceeds of said bond were for the use of Peter Yarnell, otherwise than from the circumstance that said Yarnell was the first on the bond?

Answer. I do not know that the Directors knew certainly.

Question. When a bond is discounted and becomes due, what do you mean by discounting it for a further time?

Answer. To give the payer more time.

Examination in chief continued.

Question. Would you have paid the proceeds of this bond on its being discounted to Yarnell's order or check?

Answer. I would.

Question. When a bond was discounted at the bank at the time you were Cashier, was it, or was it not generally expected as a matter of course, that the obligor to whose credit the proceeds were carried, notwithstanding the bank held all the obligors liable, would pay the bond?

Answer. I believe it was generally.

Question. You have stated that you do not know that the Directors certainly knew that this bond was discounted for the use or benefit of the first signer, now state whether, according to the best of your remembrance and belief, it was not known in bank, or by the Directors that it was for the use and benefit of the first signer?

Answer. It was understood to be for the benefit of Peter Yarnell & Co., but who the Company were I do not know.

Cross-examined.

Question. Do you know whether the bank would have loaned money on bonds, without all the obligors binding themselves as principal debtors? *Objected to by plaintiffs.*

Answer. I cannot tell.

Question. Were not bonds sometimes discounted for persons not named in the bond?

Answer. I believe they were in some instances, and the proceeds carried to the first signer on the bond.

Question. In this bond were Peter Yarnell & Company, known by the bank to be the principal debtors, more particularly than in bonds generally discounted?

Answer. I think not.

Ex. in chief continued.

Question. Was any money paid into said bank at any time on account of this defendant by any of the signers of this bond, except the first?

Answer. The discount was paid, but by whom he cannot recollect, and further this deponent saith not.

L. WALKER.

The annexed deposition of Lewis Walker, taken before me, a justice of the peace for Jefferson county, State of Ohio, was taken in the presence of the parties by their counsel as aforesaid.

Witness, my hand and seal, Dec. 6, 1837.

J. WATSON, [L. S.]
Justice of the Peace.

Form in taking waived, and to be read on the hearing, reserving any just exceptions to competency of the evidence, or any part thereof.

Z. JACOBS, *for plff.*
R. J. ALEXANDER,
For defts.

$2,100: Know all men by these presents, we Peter Yarnell & Co., Samuel Sprigg, Richard Simms, Alexander Mitchell and Z. Jacobs as principals, are jointly and severally held and firmly bound to the President, Directors and Company of the Bank of Mount Pleasant, for the use of the Bank of Mount Pleasant, in the just and full sum of twenty-one hundred dollars, lawfully money of the United States, to the payment of which said sum, well and truly to be made, to the said President, Directors and Company, for the use aforesaid, within sixty days from the date hereof, we jointly and severally bind ourselves, our heirs, &c., firmly by these presents, signed with our hands and sealed with our seals, this twentieth day of February, A. D. 1826.

Signed and delivered in presence of

PETER YARNELL & CO., [SEAL.]
SAM. SPRIGG, [SEAL.]
RICHD. SIMMS, [SEAL.]
ALEX. MITCHELL, [SEAL.]
Z. JACOBS, [SEAL.]

Interest all paid up to the 24th day of March, 1829.

ENOCH HARRIS,
Cashier.

A copy from the transcript.
Attest: WM. MINER, *Clerk.*

Copy of the bond spoken of in Walker's deposition, and the one on which the judgement at law, against Sprigg, was taken.

JACOBS, *for plff.*
ROBT. J. ALEXANDER,
For defts.

[REC. XCV.] 3

A

PETER YARNELL, No. 1

			Dr.				Cr.	
1826. 2	20	To cash paid A. Mitchell,	2077 60	1826. 2	20	By discount,		2077 60
4	24	B. do.	2100	4	17	" cash,		21
"	28	Cash,	994 50	"	24	" disc't,		994 50
5	20	B. do. paid,	1000	"	"	" do.		2077 60
6	26	do.	2100	5	20	" cash,		1000
8	28	do.	2100	6	14	" do.		23 80
				"	26	" disc't,		2077 60
				8	28	" do.		2077 60
				"	29	" cash,		22 40
			10,372 10					10,372 10
1826. 10	30	Do.	2100 00		10	27	By cash,	22 40
12	4		977		"	30	" disc't,	2077 60
1827. 1	1		2100		12	4	" exchange,	977
"	24		1457	1827.	1	1	" disc't,	2077 60
3	5		2100	"	22	" do.		1457 50
5	7		2100	3	5	" do.		2077 60
			15 80	"	"	" cash,		33
					4	30	" do.	50
				5	7	" disc't,		2077 60
			10,850 30					10,850 30

1827. 7	9		2100 00	1827.		By bal.	15 80
9	10		2100	7	9	" disc't,	2077 60
11	12		2100	9	6	" cash,	15
"	13		2968	"	10	" disc't,	2077 60
				11	1	" cash,	25
				"	12	" disc't,	2077 60
					"	" do.	2968
						" balance,	11 40
			9,268 00				9,268 00
1827. 11	13	To bal. P. 110,	11 40	1827. 12	31	By cash,	25 00
1828. 1	14	B. do. 2,	5100 00	1828. 1	14	" disc't 2,	5045 60
2	5	Cash dep't and p.	3462 00	"	21	" cash,	36 00
3	17	B. do. 2,	5100 00	2	4	" do.	4 80
4	4	Cash,	2500 00	"	"	" disc't,	3462 67
"	7	B. do.	3500 00	3	17	" do. 2,	5045 60
"	10	Cash,	1800 00	4	4	" Chas. G. Gibson,	6480 60
"	12	do.	168 00	"	7	" disc't,	3462 67
"	17	do.	249 00				
"	18	do.	100 00				
"	21	do.	177 50				
"	29	do.	500 00				
5	1	do.	892 10				
		Balance,	2 31				
			23,562 98	5	1		23,562 98

No. 2.

1828.	5	19	B. disc't,	2100	00	1828.	5	11	By balance,	2	31
	"	"	do.	3000	00		"	19	" disc't,	2077	60
	6	9	do.	3500	00		"	"	" do.	2968	
	7	21	do. 2,	5100	00		6	9	" do.	3462	67
	8	11	do.	3500	00		7	21	" cash,	89	50
	9	22	do. 2,	5100	00		"	"	" disc't 2,	5045	60
							8	24	" cash,	55	
							8	11	" disc't,	3462	67
							9	22	" do. 2,	5045	60
							10	27	" cash,	32	
									Balance,	59	05
				6743	00					6743	00

Lewis Walker, cashier, kept the accounts up to 1st mo. 8th 1829.
A copy, 12th mo. 12th 1837. ENOCH HARRIS, *Cashier.*

This account is admitted to be a true copy from the bank's books of what it purports to be, and is to be read in evidence on the hearing of this cause, as though it were proved in the usual manner. The lease alluded to, is the case of Sprigg to The Bank of Mount Pleasant, pending in the circuit court of the United States for Ohio. Admitted so far as is competent testimony.

R. J. ALEXANDER,
Solicitor for Defendants.
JACOBS, *for Plaintiffs.*

$2,077 60 cents.

MOUNT PLEASANT, February 20th, 1826.

Cashier of the Bank of Mount Pleasant pay to myself or bearer, two thousand and seventy-seven dollars and sixty cents.

ALEXANDER MITCHELL.

This is admitted to be a true copy of the check on which the proceeds of said bond was paid, and referred to by witness.

WALKER Z. JACOB,
Attorney for Plaintiff.

WHEELING, February 16, 1826.

MR. ALEXANDER MITCHELL:

Dr. I have left with my wife a bond to be offered for discount in the Mount Pleasant Bank, please request Mr. Simms, Mr. Samuel Sprigg and Mr. Jacobs, together with yourself, to endorse the bond, it will be punctually paid in sixty days, in Eastern funds. I wish you to put the note in Monday next. The money I wish to be obtained, if practicable. I would not have been under the necessity of borrowing it this time, had I not been under the necessity of going to New Orleans to keep up our supplies of provisions, until ours arrive, that together with the neglect of the assistant commissary neglecting to send the inspector's certificate along with his own for the New Orleans port, for which neglect they will not let us have the money. If you succeed in getting the money, I wish you to hand it over to Messrs. Knox and McKee, and request them to send it immediately by the first safe opportunity in the boat to the care of Messrs. Irwin and Whiteman, commission merchants, Cincinnati. Your friendly attention will be gratefully acknowledged by your friend,

PETER YARNELL.

No. 1.

Admitted to be a true copy from the original letter in the handwriting of said Peter Yarnell, and which original letter is now on file in the banking-house of the President, Directors, and Company of the Bank of Mount Pleasant. Lewis Walker, the cashier, and now present, does not recollect of having before seen this letter, and don't know how it came to the bank. This, if competent evidence is also to be admitted as evidence with the annexed letters.

Z. JACOB, *for Plaintiff.*
R. J. ALEXANDER, *for Defendants.*

WHEELING, April 17, 1826.

LEWIS WALKER, ESQ.

DEAR SIR: Mr. Mitchell has not yet returned from New Orleans, but is hourly expected, and so soon as he arrives, or sends our government drafts, it will be in our power to liquidate our note in your bank. If our indulgence can be obtained for thirty days, it will confer a peculiar favor on your obedient, &c.

PETER YARNELL AND CO.

No. 4.

WHEELING, April 26, 1826.

JOSEPH GILL, ESQ.

DEAR SIR: Your favor of the 24th instant was received, you may rest assured, that the confidence reposed in me, shall not be violated, the note shall be punctually paid. For your friendly attention please accept the grateful acknowledgements of your friend,

PETER YARNELL.

No. 2.

The annexed copies of letters, Nos. from 2 to 11, inclusive, to be used on the hearing of the case in chancery in the federal court at Columbus, between Samuel Sprigg and The President, Directors, and Company of the Bank of Mount Pleasant, if the same are competent evidence. The original of said letters, numbered from 2 to 11, are admitted to be in the handwriting of Peter Yarnell, and to be on file among the papers of the said bank of Mount Pleasant. December 6, 1837, Town of Mount Pleasant.

Z. JACOBS, *for Plaintiff.*
R. J. ALEXANDER, *for Defendants.*

No. 3.

WHEELING, May 20th, 1826.

LEWIS WALKER, ESQ.,
Cashier of the Bank of Mount Pleasant.

DEAR SIR: I send you per the bearer, Mr. A. Harkins, the amount of our note in Eastern funds, of one thousand dollars, which, we believe, falls due on the 24th instant, please to send the note by the bearer.

We are respectfully, your friend and obedient servant,
PETER YARNELL AND CO.

No. 6.

WHEELING, November 14th, 1826.

LEWIS WALKER, ESQ.

DEAR SIR: If the bill handed you by Mr. R. Patterson, was discounted, I wish you to send by the bearer, Mr. Harkins, a check on the Bank of Schuylkill, for the amount. Your friendly attendance will be gratefully acknowledged by your obedient servants,
PETER YARNELL AND CO.

No. 5.

It is admitted that the above R. Patterson was a director in said Bank of Mount Pleasant for and during the years 1826, 1827, and 1828, and still is.

JACOBS, *for Plaintiff.*
R. J. ALEXANDER, *for Defendants.*

LEWIS WALKER, ESQ.

DEAR SIR: I have been absent ten or twelve days, or I should have sent the bill earlier, and send it now by the bearer, Mr. John Lanvell, and have added an additional endorser as requested, Marcus Wilson, trusting, that it would prove satisfactory, I have checked for the amount. Your friendly attention will be gratefully acknowledged by your friends.

PETER YARNELL AND CO.

No. 6.

WHEELING, April 30th, 1827.

LEWIS WALKER, ESQ.

DEAR SIR: I enclose fifty dollars in Eastern funds, which you will please to place to our credit, it is something more than the dis-

count on our note, the interest on which you will please pay. Your friendly attention will oblige your friend, &c.

PETER YARNELL AND CO.

No. 7.

WHEELING, January 9th, 1828.

LEWIS WALKER, ESQ.

DEAR SIR: Through indisposition and hurry in business, I find on examining my bank business yesterday, that I had overrun the time that we should have renewed our note. I send the discount, thirty-six dollars, by my friend Asa Cadwallader, who will hand it over to you.

I am, respectfully, your friend,

PETER YARNELL.

No. 8.

WHEELING, July 21st, 1828.

LEWIS WALKER, ESQ.

DEAR SIR: I remit you by the bearer, Mr. A. Harkins, the balance, eighty-nine dollars, stated in your letter to us.

We are respectfully, your obedient servants,

PETER YARNELL AND CO.

No. 11.

WHEELING, July 23, 1828.

LEWIS WALKER, ESQ.

DEAR SIR: On perusing your letter, I thought we had complied with your request, but the bearer, Mr. Harkins, informed Peter Yarnell, that there was still due fifty-four dollars and some cents. I enclose you per the bearer, Mr. Thompson, the balance due to our credit. And oblige your obedient servants,

PETER YARNELL AND CO.

No. 10.

WHEELING, October 27th, 1828.

LEWIS WALKER,
Cashier of the Bank of Mount Pleasant.

DEAR SIR: Your communication was received. It is not convenient for me to be at your place to-day. I should have given attention to the notes, but have been expecting that we would have sold our boat, but have not yet done so, but so soon as a sale can be ef-

fected, which I trust will be some time in November or December, when the water is so that she can run, she will be sold, and the proceeds applied to the notes.

I am, respectfully, your obedient servant,

PETER YARNELL.

N. B.—She is a boat that stands high in character, and we paid ten thousand dollars in cash for her.

No. 9.

BANK OF MOUNT PLEASANT, 11th month, 14th, 1826.

DEAR FRIEND: The bill mentioned in thy favor of to-day was not discounted, there being no board of directors convened on last discount day. When the bill was left with me, it was my understanding, that it was offered for discount in favor of N. and J. Updegroff, please to let me hear from you before next discount day.

Respectfully, L. WALKER, *Cashier.*

P. YARNELL.

This is admitted to be in the proper hand of the said Lewis Walker, and to be his letter as cashier it purports to be, and to be read on the hearing of the cause, if competent evidence. The cause alluded to is the case of Sprigg vs. The Bank of Mount Pleasant, in the federal court, Ohio district.

JACOBS, *Attorney for Plaintiffs.*
R. J. ALEXANDER, *for Defendants.*

Whereupon, the defendants by their solicitor excepted to the reading of said testimony, and filed his exceptions, as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES,
for the 7th Circuit and District of Ohio.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF MOUNT PLEASANT
vs.
SAMUEL SPRIGG.
} Injunction.

And the said defendants by R. J. Alexander, their attorney, comes and excepts to the reading in evidence in this case of the deposition of L. Walker, copies of letters and account marked A. Also, the deposition of M. Nelson, or so much of that part thereof, by which it is sought to vary, supersede, contradict, &c., complainant's bond, and such part as may not be pertinent to the issue in question for the causes following, to wit:

1st. That such evidence is inadmissible to vary, supersede, contradict, &c., a written instrument.

2d. That said copies of letters and account are not competent evidence by reason of impertinency and uncertainty.

ROBERT J. ALEXANDER,
Solicitor for Defendants.

And the defendants by their solicitor, read the following deposition, &c., as evidence, to wit:

CIRCUIT COURT OF THE UNITED STATES,
for the 7th Circuit and District of Ohio.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF MOUNT PLEASANT *ads.* SAMUEL SPRIGG. } Bill and Injunction in Chancery pending in said Court.

To Samuel Sprigg, Esq., Complainant in the above Case.

SIR: You are hereby notified that the defendant in the above cause will, on the 28th day of February, A. D. 1838, before competent authority, at the office of John Watson, Esq., in the town of Mount Pleasant, in the county of Jefferson, in said State of Ohio, between the hours of nine o'clock A. M. and five o'clock P. M., of said day, proceed to take the depositions of sundry witnesses, to be read on the hearing of the above cause.

ROBERT J. ALEXANDER,
Solicitor for Defendants.

I delivered a copy of the above to Samuel Sprigg, complainant.
November 12th, 1838. ROBERT J. ALEXANDER.

CIRCUIT COURT OF THE UNITED STATES,
for the 7th Circuit and District of Ohio.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF MOUNT PLEASANT *ads.* SAMUEL SPRIGG. } In Chancery.

Lewis Walker being duly qualified according to law, deposeth and saith, that while he was cashier of the Bank of Mount Pleasant, when interest was paid on bonds, it would be entered in the books of the bank, to the account of the first signer of the bond, with whom alone unless otherwise specially authorized or directed the account was kept, let the interest be paid by whom it might. That he (deponent) never made as cashier of the said bank, any contract with Peter Yarnell and Co., or Peter Yarnell, for the extension of the payment of a bond discounted by said bank, about the 20th of February, 1826, for twenty-one hundred dollars, for Peter Yarnell and Co. and

others, after the same became due, for 60 days, or for any other period of time, but discounted the same as stated in a former deposition of this deponent taken in this case, according to the custom of said bank, but the time or indulgence given, was merely at the will of the bank, and he could not make any possible contract for the extension of payment of said bond, according to the rules of said bank, without an order of the board of directors of said bank, and on an examination of the minute book, he found no such order, where, if such order had been made, it would appear.

Samuel Sprigg (complainant's) name was frequently on bonds discounted by the bank, about the time the above bond was discounted, and during the same year. The deponent knows this from his own recollection, as well as from examination of the books of the bank, and which signatures, he believes, were in his (Sprigg's) own handwriting, which bonds thus signed, he believes, were in the same form as the one in question, and which is herewith attached, and which deponent believes to be a true copy of the original bond discounted by said bank, on the 20th of February, 1826, for the obligors in said bond.

The above was taken in the absence of the plaintiff and his counsel, but subsequent to nine o'clock A. M.

Cross-examined by Plaintiff's Counsel.

There were certain by-laws, or rules or regulations of the bank, written and printed, and there were other rules and practices adhered to which were not written.

LEWIS WALKER.

No certificate or evidence that John Watson is a justice of the peace is required other than his own statement. Though I waive exceptions as to mere form, yet I reserve all just exception, as to substance, sufficiency, or defect in the matter of this deposition.

JACOBS, *Attorney for Plaintiff.*

But I reserve the right to further examine witness Walker, or retake his deposition, if, upon consultation with plaintiff, it should be thought advisable to do so.

JACOBS, *for Plaintiff.*

STATE OF OHIO, *Jefferson County, ss.*

I, John Watson, a justice of the peace within and for said county, do hereby certify that Lewis Walker was by me affirmed to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him above subscribed, was reduced to writing by him, the

said Lewis Walker, and taken at the time and place in the notice hereto attached specified.

Given under my hand and seal.

J. WATSON, [SEAL.]

My fees, 50, paid J. R. Alexander. J. W.
My fees, $300, paid by same. L. WALKER.

Plaintiff objects to so much of this deposition as would go to prove, that Sprigg had executed to the said bank other bonds in the same form with the one in *litigation* in this case. The bonds themselves should be produced, or the loss accounted for, or it should have been shown that the bank was not in possession of them, and why, and also so much as go to prove the rules of the bank, the rules being in writing *should be produced* and besides these defendants cannot use this deposition to show that any thing could or could not be done according to the rules, without proving the rules, or producing them *here*, if they are in writing.

JACOBS, *for Plaintiff.*

Know all men by these presents that we, Peter Yarnell and Co., Samuel Sprigg, Richard Simms, Alexander Mitchell and Z. Jacobs, as principals, are, jointly and severally, held and firmly bound, to the President, Directors, and Company of the Bank of Mount Pleasant, for the use of the Bank of Mount Pleasant, in the just and full sum of twenty-one hundred dollars lawful money of the United States, to the payment of which said sum, well and truly to be made, to the said President, Directors and Company, for the use aforesaid, at the Bank of Mount Pleasant aforesaid, within sixty days from the date hereof, we jointly and severally bind ourselves, our heirs, &c., firmly by these presents, signed with our hands, and sealed with our seals, this 20th day of February, A. D. 1826.

Signed, sealed, and delivered in presence of

PETER YARNELL AND CO., [SEAL.]
SAMUEL SPRIGG, [SEAL.]
RICHARD SIMMS, [SEAL.]
ALEXANDER MITCHELL, [SEAL.]
Z. JACOB. [SEAL.]

(Endorsement.) Interest all paid up to the 24th day of March, 1829.

A copy as certified by the clerk of the district court of the western district of Virginia.

Attest: WILLIAM MINER, *Clerk*
7th C. C. U. S. O. D.

When this cause having been heard upon the bill, answer, replication, exhibits and testimony, and was argued by counsel, and the court having fully examined and considered of the premises, do find that the complainant is not entitled to the relief prayed for in his bill.

Whereupon, the court do order, adjudge and decree, that the injunction allowed in this case be dissolved, and the bill be dismissed, and that the complainant within sixty days pay the costs of this suit, and in default thereof, that an execution issue therefor as at law.

Costs taxed at $46 05.

And thereupon, came the complainant by his counsel and prayed an appeal to the Supreme Court, and it being shown to the satisfaction of the court, that the matter in controversy is of greater value than two thousand dollars; the said appeal is allowed, on bond being filed with security to the acceptance of the clerk according to law. Whereupon, said complainant filed the following bond to perfect said appeal, to wit:

"Know all men by these presents, that we, Samuel Sprigg, Zachariah Jacobs and John C. Wright, are held and firmly bound unto the President, Directors, and Company of the Bank of Mount-Pleasant, in the penal sum of six thousand dollars, to the payment of which well and truly to be made, we do bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals, this 26th day of December, 1838.

The condition of the above obligation is such, that whereas the said Samuel Sprigg, hath taken an appeal to the Supreme Court of the U. States, from a certain decree rendered against him in favor of the said President, Directors, and Company of the Bank of Mount Pleasant, in the circuit court of the United States, for the seventh circuit and district of Ohio, at December term, A. D. 1838, for the sum of three thousand six hundred eighty-two dollars and twenty-two cents. Now, if the said Samuel Sprigg shall pay the full amount of the decree in the said Supreme Court, and costs in case a decree shall be entered therein in favor of said appellee, then this obligation shall be void, otherwise it shall remain in full force and virtue in law.

SAMUEL SPRIGG, [SEAL.]
Z. JACOBS, [SEAL.]
J. C. WRIGHT. [SEAL.]

Approved, December 26th, 1838.

WILLIAM MINER, *Clerk.*

THE UNITED STATES OF AMERICA,
District of Ohio, ss:

I, William Miner, clerk of the circuit court of the United States, within and for the seventh circuit and district of Ohio, do certify that the foregoing is truly taken and copied from the records of the pro-

ceedings of said circuit court, in the case of Samuel Sprigg, complainant, against the Bank of Mount Pleasant, defendant, as the same remains in my office.

In testimony whereof I have hereunto set my name and affixed the seal of said court at the city of Columbus, the 27th day of January, A. D. 1839.

Attest: WM. MINER, *Clerk.*

This transcript and seal $18 66.